It follows that the award of damages will be as follows:

For the husband

(a) pre-trial loss at $300.00 p.m. for 58½ months	...	$17,550.00
(b) post-trial loss at $300.00 p.m. for 3 years	...	$10,800.00
		$28,350.00

For the three children

(a) pre-trial loss at $200.00 p.m. for 58½ months	...	$11,700.00
(b) post-trial loss at $200.00 p.m. for 8 years	...	$19,200.00
		$30,900.00

It was contended by learned counsel for the husband and the children that in computing the post-trial loss a direct multiplier should be used instead of applying the Annuity Table. Learned counsel appears to rely on a recent decision of the Privy Council in the case of *Lai Wee Lian* v. *Singapore Bus Service (1978) Ltd.*[10] following an appeal from the Singapore High Court for this proposition. It is common ground that the Annuity Table has frequently been used by the Courts in Malaysia in calculating the general damages and since the matter was not raised in the Court below and as no cross-appeal had been lodged we do not allow this ground to be raised in this appeal. It is therefore not necessary to decide this precise point here but we desire to hold ourselves free to deal with it when it arises at some future date.

As liability was only admitted by the defendants to the extent of fifty per cent only, the award would accordingly be reduced by one-half, *viz.* $14,175.00 to the husband and $15,450.00 to the children respectively. Pursuant to section 7(4) of the Civil Law Act 1956 we would apportion the award of the three children in the manner following:

(i) as to the eldest daughter, Ng Mei Ling	...	$2,575.00,
(ii) as to the second daughter, Ng Mei Ching	...	$5,150.00, and
(iii) as to the youngest child, Ng Chong Lai	...	$7,725.00.

We order that the award of the three children be paid to the Public Trustee to be held on trust for them on the usual terms.

In accordance with the provisions of section 11 of the Civil Law Act 1956 we would award interest at the rate of 3% per annum from date of issue of the Writ to date of judgment in respect of the award relating to pre-trial loss only. For these reasons we would allow the appeal and substitute for the Order made by the Court below the following:

For the husband

(a) pre-trial loss	...	$8,775.00	
(b) post-trial loss	...	$5,400.00	... $14,175.00

For the three children

(a) pre-trial loss	...	$5,850.00	
(b) post-trial loss	...	$9,600.00	... $15,450.00

The award of $4,000.00 for loss of consortium is hereby set aside. And funeral expenses being agreed at the sum of $1,500.00 is allowed. It is ordered that the defendants are entitled to their costs in this appeal to be taxed. Deposit to be refunded to them forthwith.

Appeal allowed.

Solicitors: *R.K. Nathan & Co.; Murphy & Dunbar.*

OH TECK SOON v. PUBLIC PROSECUTOR

[A. Cr. J. (Ajaib Singh J.) March 24, 1983]

[Ipoh – Criminal Appeal No. 261 of 1982]

Criminal Law and Procedure – Appeal – Charge for offences under Copyright Act, 1969 – Accused originally charged within six months of seizure of video tapes – Accused discharged not amounting to acquittal – Accused subsequently re-arrested and recharged – Preliminary objection that as second prosecution was instituted more than six months after seizure of tapes prosecution was out of time – Objection overruled by Magistrate – Appeal – Whether appeal in order – Copyright Act, 1969, s. 15(4).

Copyright – Charge for offences under Copyright Act, 1969 – Limitation under s. 15(4).

In this case the police on July 16, 1981 seized copies of tapes from the accused under a search warrant issued by a Magistrate under section 15(4) of the Copyright Act, 1969. The accused was charged in Court the same day for

offences under the Copyright Act. After a number of postponements, the accused was discharged on September 14, 1982, the discharge not amounting to an acquittal. Subsequently the accused was arrested on a warrant of arrest issued by the Magistrate and he was produced before the Magistrate on December 1, 1982. The same two charges were preferred against him. A preliminary objection was raised that the prosecution was out of time. The learned Magistrate was of the view that the second prosecution was in fact a continuation of the first one and as such it was not caught by the six months' limitation under section 15(4) of the Copyright Act. He therefore overruled the preliminary objection. The accused appealed.

Held: (1) the second prosecution in this case could not be a continuation of the first one. The proceedings which were instituted within six months of the seizure of the tapes terminated when the accused was discharged. As the second proceedings were not instituted within the six months' period the Magistrate's Court had no jurisdiction to take cognizance of the offences with which the accused was charged on the second occasion;

(2) the ruling by the learned magistrate was not a ruling on mere procedure from which there could be no right of appeal. The ruling went to the very jurisdiction of the Magistrate's Court and as such the appeal was in order;

(3) in the exercise of the appellate jurisdiction as well as the revisionary powers of the High Court the accused should be acquitted and discharged.

CRIMINAL APPEAL.

Hira Singh for the appellant.

Mohamed Bazain bin Idris (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ajaib Singh J.: This was an appeal against a ruling made by the learned magistrate upon a preliminary objection taken by learned counsel for the accused. The brief history of this case is as follows. On July 16, 1981 the police seized 286 copies of video tapes from the accused under a search warrant issued by a magistrate under section 15(4) of the Copyright Act 1969. The accused was arrested on the same day and charged in court on November 27, 1981 on two counts under section 15(1)(b) and (d) the second charge being in the alternative. Thereafter the prosecution was unable to proceed with the case for some reason or other and after several postponements the case came up for hearing on September 14, 1982 when the learned magistrate discharged the accused not amounting to an acquittal after he had disallowed an application by the prosecution for a further postponement. The prosecution had sought the postponement on the ground that a material witness had not been served with a subpoena.

On October 26, 1982 the police applied for a warrant of arrest against the accused by laying a written information whereupon the learned magistrate issued a warrant of arrest on the same day. The first arrest on July 16, 1981 was made without a warrant but this was quite in order as the accused was being charged with seizable offences. In due course the accused was arrested on the warrant of arrest and produced before the learned magistrate on December 1, 1982. The same two charges were preferred against the accused relating to the same 286 copies of video tapes which the police had seized on July 16, 1981. It was at this stage that learned counsel for the accused raised the preliminary objection. He submitted that when the accused was discharged not amounting to an acquittal on September 14, 1982 the proceedings came to an end. The present prosecution was a fresh one and by virtue of section 15(4) of the Copyright Act the prosecution was out of time to institute further proceedings against the accused. Learned counsel asked that the accused be acquitted and discharged and that the tapes be returned to the accused.

The learned magistrate however was of the view that the second prosecution was in fact a continuation of the first one and as such it was not caught by the six months' period under section 15(4) of the Copyright Act. He accordingly overruled the preliminary objection.

Section 15(4) of the Copyright Act reads as follows –

"(4) If information is given upon oath to any magistrate that there is reasonable cause for suspecting that there are in any house, premises, vessel or other place any infringing copies (or any contrivance used or intended to be used for making infringing copies) or capable of being used for the purpose of making infringing copies by means of or in relation to which any offence under sub-section (1) of this section has been committed, he may issue a warrant under his hand by virtue of which any police officer named or referred to in the warrant may enter the house, premises, vessel or other place at any reasonable time by day and search for and seize any such copy or contrivance; and if a copy or contrivance is seized under this sub-section in connection with an offence and –

(a) in proceedings brought under this section in connection with the offence no order is made under sub-section (2) of this section as to the copy or contrivance; or

(b) no such proceedings are instituted within six months of the seizure,

the copy or contrivance shall be returned to the person in whose possession it was when it was seized or, if it is not

reasonably practicable to return it to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities."

In my view the intention of the legislature in enacting section 15(4)(b) of the Copyright Act is that after the infringing copies are seized by the police under a search warrant issued by a magistrate proceedings for any offence under section 15(1) must be instituted within six months of the seizure. If no proceedings are instituted within the six months the copies have to be returned to the person from whom they were seized or be dealt with in accordance with the provisions of section 15(4) of the Copyright Act.

The second prosecution in this case cannot be a continuation of the first one. The proceedings which were instituted within six months of the seizure of the tapes terminated on September 14, 1982 when the accused was discharged. Those proceedings were thereafter dead and gone to all intents and purposes. The order of discharge of the accused by itself was no bar to the institution of further proceedings against the accused but any further proceedings had to be instituted within six months of the seizure of the tapes and these six months had already lapsed when the accused was arrested the second time. And as the second proceedings were not instituted within the aforesaid six months the magistrate's court had no jurisdiction to take cognizance of the offences with which the accused was charged on this second occasion. The ruling by the learned magistrate was not a ruling on mere procedure from which there could be no right of appeal. The ruling went to the very jurisdiction of the magistrate's court and as such an appeal was quite in order. In the exercise of the appellate jurisdiction as well as the revisionary powers of the High Court I ordered that the accused be acquitted and discharged and that the video tapes be returned to him.

Order accordingly.

Solicitors: *Asbir, Hira Singh & Co.*

OVERSEA-CHINESE BANKING CORPORATION LTD. v. NATIONAL UNION OF BANK EMPLOYEES & ORS.

[O.C.J. (Wan Hamzah J.) May 11, 1984]

[Kuala Lumpur – Originating Motion, No A16 of 1984]

Administrative Law – Reference of dispute by Minister of Labour to Industrial Court – Application for leave to apply for order of certiorari to quash order of reference of Minister – Application for leave to apply for order of prohibition to prohibit Industrial Court from hearing dispute – Applications unnecessary and premature – Industrial Relations Act, 1967, s. 26(2).

Industrial Law – Transfer of bank officer – Whether dispute between Bank and Union over transfer a trade dispute – Reference of dispute by Minister to Industrial Court – Applications for leave to issue orders of certiorari and prohibition – Applications unnecessary and premature – Industrial Relations Act, 1967, s. 26(2).

In this case an employee of the applicant-bank was transferred from the Accounts Section of the bank to the Credit/Administration Department in the same office after an inquiry into certain discrepancies in the books maintained by him. The Union (1st respondent) protested against the transfer and asked the bank to rescind it. The dispute was eventually submitted to the Minister of Labour who referred the dispute to the Industrial Court. The applicant being advised that the dispute was not a trade dispute applied

(a) for leave to apply for an order of *certiorari* to remove into the Court for the purpose of it being quashed the order of reference of the Minister on the ground that the Minister had acted without jurisdiction, and

(b) for leave to apply for an order of prohibition to prohibit the Industrial Court from proceeding to hear and determine the dispute on the ground that the Industrial Court had no jurisdiction to do so.

Held: the application should be dismissed on the ground that prayer (a) was unnecessary and prayer (b) was premature, and on the ground that to entertain the application would encourage duplicity of proceedings. The applicant should have raised the question that the dispute was not a trade dispute before the Industrial Court. If after hearing the question the Industrial Court were to dismiss the objection, that would be the right time for the applicant to apply for an order of prohibition.

Case referred to:-

(1) *Assunta Hospital* v. *Dr. A. Dutt* [1981] 1 M.L.J. 115.

ORIGINATING MOTION.

C.V. Das (*M. Nagarajah* with him) for the applicant.